

Memorandum 2009-34

**Statutes Made Obsolete by Trial Court Restructuring: Part 5
(Staff Draft Tentative Recommendation)**

The Commission is continuing its work on statutes made obsolete by trial court restructuring.

A staff draft of a tentative recommendation is attached. With two exceptions, the draft tentative recommendation incorporates revisions approved by the Commission at previous meetings for inclusion in a tentative recommendation. See Minutes (June 2009), p. 3; Minutes (April 2009), pp. 4-7. Based on new information, the draft tentative recommendation includes revisions to Government Code Section 53679 that differ from those approved by the Commission at its meeting in April. The draft also includes a proposed amendment of Government Code Section 53647.5, which was not previously discussed.

Todd Torr, an attorney at the Administrative Office of the Courts ("AOC"), alerted us to the information relevant to Section 53679. He also alerted us that Government Code Section 53647.5 may need revision due to trial court restructuring. The staff appreciates his input.

This memorandum discusses the new information relevant to Section 53679, and presents possible revisions to the provision. Next, the memorandum discusses possible revisions to Section 53647.5. Both of these provisions relate to bank account deposits by courts.

The Commission and interested persons should review the draft revisions in this memorandum, and the attached draft tentative recommendation. At its next meeting, the Commission should decide whether to approve the draft tentative recommendation, with or without revision, for circulation as a tentative recommendation.

GOVERNMENT CODE SECTION 53679

Government Code Section 53679 specifies the types of bank accounts (e.g., an account of a state or national bank, or federal or state credit union) into which

money received by a municipal court judge or officer may be deposited. Section 53679 also specifies the types of bank accounts into which money belonging to a local agency may be deposited.

Previous Recommendation

Because municipal courts no longer exist, the staff previously recommended deleting material from Section 53679 that relates to municipal court bank deposits, as follows:

Gov't Code § 53679 (amended). Deposits

53679. So far as possible, all money belonging to a local agency under the control of any of its officers or employees other than the treasurer ~~or a judge or officer of a municipal court shall, and all money coming into the possession of a judge or officer of a municipal court may,~~ shall be deposited as active deposits in the state or national bank, inactive deposits in the state or national bank or state or federal association, federal or state credit union, or federally insured industrial loan company in this state selected by the officer, ~~or employee, or judge of the court.~~ For purposes of this section, an officer or employee of a local agency ~~and a judge or officer of a municipal court are~~ is prohibited from depositing local agency funds or money coming into ~~their~~ the officer's or employee's possession into a state or federal credit union if an officer or employee of the local agency, ~~or a judge or officer of a municipal court,~~ also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the particular state or federal credit union. Such money is subject to this article except:

(a) Deposits in an amount less than that insured pursuant to federal law are not subject to this article. For deposits in excess of the amount insured under any federal law, a contract in accordance with Section 53649 is required and the provisions of this article shall apply.

~~(b) Interest is not required on money deposited in an active deposit by a judge or officer of a municipal court.~~

~~(c)~~ (e) Interest is not required on money deposited in an active deposit by an officer having control of a revolving fund created pursuant to Chapter 2 (commencing with Section 29300) of Division 3 of Title 3.

~~(d)~~ (c) Interest is not required on money deposited in an active deposit by an officer having control of a special fund established pursuant to ~~Articles~~ Article 5 (commencing with Section 29400) or Article 6 (commencing with Section 29430) of Chapter 2 of Division 3 of Title 3.

Comment. Section 53679 is amended to reflect the unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

See Memorandum 2009-20, pp. 16-17. The Commission approved those revisions for inclusion in a tentative recommendation. See Minutes (April 2009), p. 7.

Impact of Penal Code Section 1463.1

Due to input from Todd Torr of the AOC, the staff no longer recommends revising Section 53679 as shown above. Mr. Torr suggested that we consider the interrelationship between Section 53679 and Penal Code Section 1463.1. Having undertaken such analysis, the staff now believes that the previously recommended revisions would delete material that has ongoing relevance, due to Penal Code Section 1463.1.

That section specifies where a court may deposit bail money. Under the section, a superior court may, with approval from the Administrative Director of the Courts, deposit bail money into an account pursuant to Section 53679. Section 1463.1 states:

1463.1 Notwithstanding any other provisions of law except Section 77009 of the Government Code, any trial court may elect, with prior approval of the Administrative Director of the Courts, to deposit in a bank account pursuant to Section 53679 of the Government Code, all moneys deposited as bail with the court, or with the clerk thereof.

All moneys received and disbursed through the bank account shall be properly and uniformly accounted for under any procedures the Controller may deem necessary. The Judicial Council may regulate the bank accounts, provided that its regulations are not inconsistent with those of the Controller.

Formerly, Section 1463.1 applied only to municipal courts. See 1998 Cal. Stat. ch. 931, § 421. However, in 2001, the Legislature amended the provision to apply not just to municipal courts, but to *any* trial court. See 2001 Cal. Stat. ch 812, § 25.

Under Section 1463.1, a superior court could not deposit bail money pursuant to Section 53679 if the Judicial Council directed courts to deposit the money into an account established under Government Code Section 77009. See Section 1463.1 (“Notwithstanding any other provisions of law except Section 77009 of the Government Code, any trial court may ...”); see also Gov’t Code § 77009 (authorizing Judicial Council to establish bank accounts and require courts to deposit money into those accounts). According to Mr. Torr, however, the Judicial

Council has not directed courts to deposit bail money into an account established under Section 77009. As a result, Section 1463.1 allows a superior court, with approval of the Administrative Director of the Courts, to deposit bail money into an account pursuant to Section 53679.

Because a superior court may, with the requisite approval, deposit bail money into an account pursuant to Section 53679, the provisions relating to court deposits in Section 53679 have ongoing relevance.

Accordingly, Section 53679 should not be revised to delete the provisions relating to deposits by courts, as the staff previously recommended. That would overturn the Legislature's decision in 2001 to authorize any trial court, not just the municipal court, to deposit bail money into an account pursuant to Section 53679.

New Recommendation

Instead of the previously recommended amendment, Section 53679 should be revised to remove obsolete material, but in a manner that preserves the Legislature's decision in 2001.

That could be achieved by revising Section 53679 so that it would continue to apply to deposits by a trial court, but only as to bail money. **Specifically, the staff recommends the following amendment of Section 53679:**

Gov't Code § 53679 (amended). Deposits

53679. So far as possible, all money belonging to a local agency under the control of any of its officers or employees other than the treasurer ~~or a judge or officer of a municipal court~~ shall, and all money deposited as bail coming into the possession of a judge or officer of a ~~municipal~~ superior court may, be deposited as active deposits in the state or national bank, inactive deposits in the state or national bank or state or federal association, federal or state credit union, or federally insured industrial loan company in this state selected by the officer, employee, or judge of the court. For purposes of this section, an officer or employee of a local agency and a judge or officer of a ~~municipal~~ superior court are prohibited from depositing local agency funds or money coming into their possession into a state or federal credit union if an officer or employee of the local agency, or a judge or officer of a ~~municipal~~ superior court, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the particular state or federal credit union. Such money is subject to this article except:

(a) Deposits in an amount less than that insured pursuant to federal law are not subject to this article. For deposits in excess of

the amount insured under any federal law, a contract in accordance with Section 53649 is required and the provisions of this article shall apply.

(b) Interest is not required on money deposited in an active deposit by a judge or officer of a ~~municipal~~ superior court.

(c) Interest is not required on money deposited in an active deposit by an officer having control of a revolving fund created pursuant to Chapter 2 (commencing with Section 29300) of Division 3 of Title 3.

(d) Interest is not required on money deposited in an active deposit by an officer having control of a special fund established pursuant to ~~Articles~~ Article 5 (commencing with Section 29400) or Article 6 (commencing with Section 29430) of Chapter 2 of Division 3 of Title 3.

Comment. Section 53679 is amended to reflect the unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution. The provisions relating to bank deposits by a court are amended to conform with Penal Code Section 1463.1, as amended in 2001. Those amendments expanded Section 53679 to apply to any trial court, but only as to bail money. See 2001 Cal. Stat. ch. 812, § 25.

Subdivisions (a) and (d) are amended to make stylistic revisions.

These revisions would remove material relating to court deposits that is obsolete due to trial court restructuring. At the same time, the revisions would preserve the Legislature's decision to authorize any trial court to deposit bail money pursuant to Section 53679. See Penal Code § 1463.1; 2001 Cal. Stat. ch. 812, § 25. These revisions are included and explained in the attached draft tentative recommendation. **The Commission needs to decide whether to proceed with them, revert to the earlier amendment, or take some other approach.**

GOVERNMENT CODE SECTION 53647.5

Todd Torr also alerted the staff to Government Code Section 53647.5, which relates to Section 53679 and appears to need revision to reflect trial court restructuring. Section 53647.5 states:

53647.5. Notwithstanding any other provision of law, interest earned on any bail money deposited in a bank account pursuant to Section 1463.1 of the Penal Code and Section 53679 of this code shall, if the board of supervisors so directs, be allocated for the support of the courts in that county.

Under Section 53647.5, the county board of supervisors may allocate interest earned on bail money to support the courts in that county. But Section 53647.5 provides that the board of supervisors may only allocate interest earned on bail money deposited pursuant to *both* Penal Code Section 1463.1 *and* Government Code Section 53679 (*not* pursuant to either of those provisions alone).

The money that may be deposited pursuant to both of those provisions is bail money deposited *by a court*. That is because (1) Section 53679 authorizes deposits by a court or a local agency, but (2) Section 1463.1 only authorizes deposits of bail money, and only allows such deposits *by a court*. Accordingly, Section 53647.5 applies only to interest earned on bail money deposited *by a court*.

Taking together all of the above, Section 53647.5 provides that the board of supervisors may allocate interest earned on bail money deposited by a court to support the courts in the county. Due to trial court restructuring, however, that may no longer be appropriate.

The state, not the county, is now responsible for funding court operations. See Gov't Code §§ 77003 ("court operations" defined), 77200 (state funding of "court operations"). Also, the county is no longer responsible for managing the courts. See Gov't Code § 77001 (rules to be promulgated by Judicial Council for decentralized system of court management).

Because the county neither funds court operations nor manages the courts, it no longer seems appropriate for the board of supervisors to control interest earned on bail money deposited by a court.

Instead, it would be appropriate to place such control with the judicial branch. For example, Section 53679.5 could be amended to give control to the Judicial Council, which is responsible for the trial court budget process. See Gov't Code § 68502.5. That could be done as follows:

Gov't Code § 53647.5 (amended). Interest on bail deposits

53647.5. Notwithstanding any other provision of law, interest earned on any bail money deposited by a court in a bank account pursuant to Section 1463.1 of the Penal Code and Section 53679 of this code shall, if the ~~board of supervisors~~ Judicial Council so directs, be allocated for the support of ~~the courts in that county~~ that court.

Comment. Section 53647.5 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See, e.g., Gov't Code §§ 77001 (local trial court management), 77003 ("court operations")

defined), 77200 (state funding of “court operations”); see also Cal. R. Ct. 10.810.

Alternatively, Section 53647.5 could be amended to give control to the court that deposits the bail money. That could be done as follows:

Gov’t Code § 53647.5 (amended). Interest on bail deposits

53647.5. Notwithstanding any other provision of law, interest earned on any bail money deposited by a court in a bank account pursuant to Section 1463.1 of the Penal Code and Section 53679 of this code shall, if the ~~board of supervisors~~ court so directs, be allocated for the support of ~~the courts in that county~~ that court.

Comment. Section 53647.5 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov’t Code §§ 77000-77655). See, e.g., Gov’t Code §§ 77001 (local trial court management), 77003 (“court operations” defined), 77200 (state funding of “court operations”); see also Cal. R. Ct. 10.810.

The staff is not sure which of these possible amendments is the best policy. Instead of taking a position on the point at this time, **we recommend that the Commission present both alternatives in the tentative recommendation, with a note specifically soliciting comment on the issue.** We have followed that approach at page 22 of the attached draft.

Respectfully submitted,

Catherine Bidart
Staff Counsel

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

<h2>STAFF DRAFT</h2>

TENTATIVE RECOMMENDATION

Statutes Made Obsolete by Trial Court Restructuring: Part 5

August 2009

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
650-494-1335
<commission@clrc.ca.gov>

SUMMARY OF TENTATIVE RECOMMENDATION

In the past decade, the trial court system has been dramatically restructured, necessitating revision of hundreds of code provisions.

By statute, the Law Revision Commission is responsible for revising the codes to reflect trial court restructuring. The Commission has done extensive work in response to this directive, and several major reforms have been enacted.

Of the work that remains, this tentative recommendation addresses the following:

- Municipal court marshals (Penal Code § 13510).
- Municipal court bank accounts (Gov't Code §§ 53679 & 71381).
- Interest on deposits of bail (Gov't Code § 53647.5).
- Writ jurisdiction (Code Civ. Proc. §§ 1068, 1085, 1103).
- Compensation under Evidence Code Section 731.
- Employment, assignment, and compensation of interpreters and translators (Gov't Code §§ 26806, 68092, 69894.5).

The tentative recommendation also includes technical revisions to the definition of “subordinate judicial officer” (Gov't Code § 71601), for purposes of the Trial Court Employment Protection and Governance Act.

The Commission is continuing its work on trial court restructuring and plans to address other subjects in future recommendations.

This tentative recommendation was prepared pursuant to Government Code Section 71674 and Resolution Chapter 100 of the Statutes of 2007.

STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING: PART 5

1 Over the past decade, California’s trial court system has been dramatically
2 restructured. Major reforms include:

- 3 • State, as opposed to local, funding of trial court operations.¹
- 4 • Trial court unification on a county-by-county basis, eventually occurring in
5 all counties. Trial court operations have been consolidated in the superior
6 court of each county and municipal courts no longer exist.²
- 7 • Enactment of the Trial Court Employment Protection and Governance Act,
8 which established a new personnel system for trial court employees.³

9 As a result of these reforms, hundreds of sections of the California codes
10 became obsolete, in whole or in part. The Legislature directed the Law Revision
11 Commission to revise the codes to eliminate material that became obsolete as a
12 result of trial court restructuring.⁴

13 The Commission has completed a vast amount of work on trial court
14 restructuring, and the Legislature has enacted several measures to implement the
15 Commission’s recommendations.⁵ In this work, the approach has been to avoid

1. The Lockyer-Isenberg Trial Court Funding Act, enacted in 1997, made the state responsible for funding trial court operations. See 1997 Cal. Stat. ch. 850; see generally Gov’t Code §§ 77000-77655.

2. In 1998, California voters approved a measure that amended the California Constitution to permit the municipal and superior courts in each county to unify on a vote of a majority of the municipal court judges and a majority of the superior court judges in the county. Former Cal. Const. art. VI, § 5(e), approved by the voters June 2, 1998 (Proposition 220). Upon unification of the courts in Kings County, on February 8, 2001, the courts in all 58 counties had unified.

3. 2000 Cal. Stat. ch. 1010; see Gov’t Code §§ 71600-71675.

4. Gov’t Code § 71674. The Commission is also authorized to make recommendations “pertaining to statutory changes that may be necessitated by court unification.” 2007 Cal. Stat. res. ch. 100.

5. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 60 (1998), implemented by 1998 Cal. Stat. ch. 931 (revising the codes to accommodate trial court unification) (hereafter, *Revision of Codes*); *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm’n Reports 657 (1999); *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm’n Reports 1 (2002), implemented by 2002 Cal. Stat. ch. 784 & ACA 15, approved by the voters Nov. 5, 2002 (Proposition 48); *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm’n Reports 169 (2003), implemented by 2003 Cal. Stat. ch. 149; 1999 Cal. Stat. ch. 344; *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports 305 (2006), implemented by 2007 Cal. Stat. ch. 43; *Statutes Made Obsolete by Trial Court Restructuring: Part 4*, 37 Cal. L. Revision Comm’n Reports 171 (2007), implemented by 2008 Cal. Stat. ch. 56; *Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdiction*, 37 Cal. L. Revision Comm’n Reports 195 (2007), implemented by 2008 Cal. Stat. ch. 56.

1 making any substantive change, other than that necessary to implement the
2 restructuring reform.⁶

3 Of the topics that still require attention, this tentative recommendation addresses
4 the following:

- 5 • Municipal court marshals (Penal Code § 13510).
- 6 • Municipal court bank accounts (Gov't Code §§ 53679 & 71381).
- 7 • Interest on deposits of bail (Gov't Code § 53647.5).
- 8 • Writ jurisdiction (Code Civ. Proc. §§ 1068, 1085, 1103).
- 9 • Compensation under Evidence Code Section 731.
- 10 • Employment, assignment, and compensation of interpreters and translators
11 (Gov't Code §§ 26806, 68092, 69894.5).

12 The tentative recommendation also includes technical revisions to the definition of
13 “subordinate judicial officer” (Gov't Code § 71601), for purposes of the Trial
14 Court Employment Protection and Governance Act.

15 The Commission has studied each of these topics and reached tentative
16 conclusions on how to revise the pertinent statutes to reflect trial court
17 restructuring.

18 MUNICIPAL COURT MARSHALS

19 Penal Code Section 13510 contains references to marshals of the municipal
20 court.

21 Marshals historically served the municipal court. Because there no longer are
22 any municipal courts, most counties no longer have marshals. However, in a few
23 counties, marshals now serve the unified superior court.⁷

24 To reflect this, the Commission tentatively recommends that Section 13510 be
25 amended to delete the references to a municipal court marshal, and replace them
26 with references to a marshal who serves a superior court.⁸

27 MUNICIPAL COURT BANK ACCOUNTS

28 Government Code Sections 53679 and 71381 contain references to municipal
29 court bank accounts.⁹

6. See, e.g., *Revision of Codes*, *supra* note 5; *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1, 18-19, 28 (1994).

7. For example, superior courts in Shasta County and Trinity County use marshals for court security services.

8. See proposed amendment to Penal Code § 13510 *infra*.

9. The Commission identified these provisions as problematic in 2001, but refrained from addressing them because the area of superior court bank accounts was unsettled and involved substantive policy and fiscal issues. See *Tentative Recommendation on Statutes Made Obsolete by Trial Court Restructuring* (Nov. 2001), pp. 192, 316.

1 **Government Code Section 53679**

2 Government Code Section 53679 authorizes a municipal court to deposit money
3 it receives into bank accounts, subject to the rules set forth in that provision.¹⁰
4 Even though municipal courts no longer exist, the rules governing municipal court
5 bank deposits are not wholly obsolete.

6 Due to a separate statutory provision (Penal Code § 1463.1), the rules govern
7 bank deposits of bail money received by a superior court. Accordingly, the
8 Commission tentatively recommends revising Section 53679 to reflect that it
9 (1) no longer governs municipal court bank deposits, as such courts no longer
10 exist, but (2) governs superior court deposits of bail money.¹¹

11 **Government Code Section 71381**

12 Government Code Section 71381 contains language relating to municipal court
13 bank accounts. The provision authorizes the Controller to establish such accounts.

14 By February 2001, the trial courts in each county had unified, and the municipal
15 courts were subsumed into a unified superior court.¹² Because no municipal court
16 has existed since February 2001, it seems improbable that any municipal court
17 bank account that may have been established pursuant to Section 71381 is still in
18 use.

19 Therefore, the language relating to the municipal court bank accounts appears to
20 be obsolete. As such, the Commission tentatively recommends deleting it.¹³

21 **INTEREST ON DEPOSITS OF BAIL**

22 Government Code Section 53647.5 governs interest earned on a bank deposit of
23 bail money received by a trial court.¹⁴ The section allows the county board of
24 supervisors to allocate that interest to support the courts in that county.

25 However, under the Lockyer-Isenberg Trial Court Funding Act, the state, not the
26 county, funds trial court operations.¹⁵ Also, the county is no longer responsible for
27 managing the courts.¹⁶

10. The provision also applies to bank deposits of money belonging to a local agency.

11. See proposed amendment to Gov't Code § 53679 *infra*.

12. See *supra* note 2.

13. See proposed amendment to Gov't Code § 71381 *infra*.

14. The section governs interest earned on bail money deposited by a court, but does not govern interest earned on other deposits by a court, nor other deposits of bail. That is because the section expressly applies to interest earned on bail money deposited pursuant to *both* Penal Code Section 1463.1 *and* Government Code Section 53679 (*not* pursuant to either of them alone). The only money that may be deposited pursuant to both of those provisions is bail money deposited *by a court*. See Gov't Code § 53679 (authorizing deposits by court or officer or employee of local agency); Penal Code § 1463.1 (authorizing deposits *by a court* only).

15. See *supra* note 1; Gov't Code §§ 77003 (“court operations” defined); 77200 (state funding of “court operations”).

1 Due to those changes, it is no longer appropriate for the county to decide
2 whether interest earned on bail money deposited by a court should be allocated to
3 support that court. Instead, it would be appropriate for that decision to be made
4 within the judicial branch. The Commission tentatively recommends doing so.¹⁷
5 However, it is not clear whether the decision should be made by the court that
6 makes the deposit or the Judicial Council, which is responsible for the trial court
7 budget process.¹⁸ The Commission specially solicits comment on which of those
8 entities should make the decision.

9 WRIT JURISDICTION

10 A writ is a written court order, which directs a person or entity to perform or
11 cease a specified act. In California, there are several types of extraordinary writs:

- 12 (1) *A writ of review (also known as a writ of certiorari).* A writ of review is a
13 means of reviewing judicial action when no other means of review is
14 available.¹⁹ A court may issue a writ of review when an inferior tribunal,
15 board, or officer, exercising judicial functions, has exceeded its jurisdiction
16 and there is no appeal or any plain, speedy, and adequate remedy.²⁰
- 17 (2) *A writ of mandamus (also known as a writ of mandate).* A writ of mandamus
18 is a broad remedy to compel performance of a ministerial duty or to restore
19 rights and privileges of a public or private office.²¹
- 20 (3) *A writ of prohibition.* A writ of prohibition is a writ to restrain judicial
21 action in excess of jurisdiction when there is no other adequate remedy.²²

22 The California Constitution provides that the Supreme Court, courts of appeal,
23 superior courts, and their judges have original jurisdiction in proceedings for

16. See Gov't Code § 77001 (rules to be promulgated by Judicial Council for decentralized system of court management).

17. See proposed amendment to Gov't Code § 53647.5 *infra*.

18. See Gov't Code § 68502.5.

19. B. Witkin, California Procedure *Extraordinary Writs* § 4, at 784-85 (4th ed. 1997).

20. Code Civ. Proc. § 1068(a). "Certiorari in purpose and effect is quite similar to appeal." B. Witkin, California Procedure *Extraordinary Writs* § 6, at 888 (6th ed. 2008).

21. B. Witkin, *supra* note 20, *Extraordinary Writs* § 23, at 902. A writ of mandamus "may be issued by any court to any inferior tribunal, corporation, board, or person, to *compel the performance of an act* which the law specifically enjoins, as a duty resulting from an office, trust, or station, or to *compel the admission of a party to the use and enjoyment of a right or office* to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person." Code Civ. Proc. § 1085(a) (emphasis added).

22. B. Witkin, *supra* note 20, *Extraordinary Writs* § 18, at 899. A writ of prohibition "arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person. Code Civ. Proc. § 1102. The writ "may be issued by any court to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law." Code Civ. Proc. § 1103(a).

1 extraordinary writs.²³ As amended to accommodate trial court unification, the
2 Constitution further provides that the appellate division of the superior court has
3 original jurisdiction in proceedings for extraordinary writs that are “directed to the
4 superior courts in causes subject to its appellate jurisdiction.”²⁴

5 To implement this constitutional directive, the statute governing jurisdiction of a
6 writ of review²⁵ was amended to add a new subdivision, concerning issuance of a
7 writ of review by the appellate division of the superior court:

8 (b) The appellate division of the superior court may grant a writ of review
9 directed to the superior court in a limited civil case or in a misdemeanor or
10 infraction case. Where the appellate division grants a writ of review directed to
11 the superior court, the superior court is an inferior tribunal for purposes of this
12 chapter.²⁶

13 Similar amendments were made to the statute governing jurisdiction of a writ of
14 mandamus²⁷ and the statute governing jurisdiction of a writ of prohibition.²⁸

15 These amendments properly reflect that as a general rule, limited civil cases,²⁹
16 misdemeanors, and infraction cases are subject to the appellate jurisdiction of the
17 appellate division.³⁰ To fully conform to the constitutional parameter, however, the
18 writ statutes should expressly state that the appellate division may issue a writ
19 directed to the superior court only in a limited civil case “subject to the appellate
20 jurisdiction of the appellate division,” or in a misdemeanor or infraction case
21 “subject to the appellate jurisdiction of the appellate division.”

22 This jurisdictional limitation is already implicit in the writ statutes, which must
23 be harmonized with constitutional constraints.³¹ But it should be made explicit to
24 help prevent confusion.

25 For example, although a small claims case is a type of limited civil case,³² it is
26 not subject to the appellate jurisdiction of the appellate division. Rather, a small

23. Cal. Const. art. VI, § 10.

24. *Id.*

25. Code Civ. Proc. § 1068.

26. 1998 Cal. Sta. ch. 931, § 111; 1999 Cal. Stat. ch. 344, § 16.

27. See Code Civ. Proc. § 1085; 1998 Cal. Stat. ch. 931, § 112; 1999 Cal. Stat. ch. 344, § 17.

28. See Code Civ. Proc. § 1103; 1998 Cal. Stat. ch. 931, § 113; 1999 Cal. Stat. ch. 344, § 18.

29. A “limited civil case” is a civil case for \$25,000 or less that meets certain other requirements. See Code Civ. Proc. § 85 & Comment.

30. Code Civ. Proc. § 904.2; Penal Code § 1466.

31. *OCM Principal Opportunities Fund v. CIBC World Markets Corp.*, 168 Cal. App. 4th 185, 192, 85 Cal. Rptr. 3d 350 (2008) (“Whenever possible, statutes are to be interpreted as consistent with applicable constitutional provisions so as to harmonize both.”); see also *California Housing Finance Agency v. Elliot*, 17 Cal. 3d 575, 594, 551 P.2d 1193, 131 Cal. Rptr. 361 (1976) (stating that “wherever possible, [the Court] will interpret a statute as consistent with applicable constitutional provisions, seeking to harmonize Constitution and statute”).

32. See Code Civ. Proc. § 87.

1 claims appeal consists of a new hearing before a judicial officer other than the
2 judicial officer who heard the case in the small claims division.³³ Because the
3 appellate division lacks jurisdiction of a small claims appeal, and the Constitution
4 says the appellate division only has writ jurisdiction “in causes subject to its
5 appellate jurisdiction,” the appellate division cannot constitutionally review a
6 judgment or prejudgment ruling in a small claims case by way of extraordinary
7 writ. Yet the writ statutes now state unequivocally that the appellate division may
8 issue a writ “directed to the superior court in a limited civil case.”³⁴

9 The Commission tentatively recommends that the statutes be amended to more
10 closely track the constitutional language.³⁵ This would help make clear that the
11 appellate division has no jurisdiction to review a judgment or prejudgment ruling
12 in a small claims case by way of extraordinary writ.³⁶

13 COMPENSATION UNDER EVIDENCE CODE SECTION 731

14 Evidence Code Sections 730 and 731 govern compensation of a court-appointed
15 expert,³⁷ an interpreter for a witness,³⁸ and a translator of a writing offered in
16 evidence.³⁹

17 Section 730 provides that the amount of compensation is fixed by the court.

18 Section 731 places responsibility for payment of the compensation with the
19 county or the parties, depending largely on the nature of the underlying case
20 (criminal, juvenile, or civil). In a criminal case or a juvenile case, the county is
21 responsible for the payment.⁴⁰ In a civil case, the parties pay, except the county
22 may elect to pay for court-appointed medical experts in civil cases.⁴¹

33. Code Civ. Proc. § 116.770(a); see also Code Civ. Proc. § 87 (if statute applicable to small claims case conflicts with statute applicable to limited civil case, statute applicable to small claims case governs).

34. Code Civ. Proc. §§ 1068(b), 1085(b), 1103(b).

35. See proposed amendments to Code Civ. Proc. §§ 1068, 1085, 1103 *infra*.

36. The Commission further recommends that Code of Civil Procedure Section 1085 be amended to correct an erroneous reference to a writ of review (instead of a writ of mandate), and a similar correction be made in Code of Civil Procedure Section 1103. See proposed amendments to Code Civ. Proc. §§ 1085, 1103 *infra*.

37. See Evid. Code §§ 730 (providing that court may fix compensation of court-appointed expert, who may be appointed when expert evidence appears necessary), 731 (setting forth compensation scheme applicable to court-appointed expert).

38. See Evid. Code § 752(b) (providing that compensation of interpreter for witness is governed by article commencing with Section 730); see also Evid. Code § 752(a) (requiring interpreter for witness incapable of understanding or expressing self in English).

39. See Evid. Code § 753(b) (providing that compensation of translator of writing offered in evidence is governed by article commencing with Section 730); see also Evid. Code § 753(a) (requiring translator when writing offered in evidence is incapable of being deciphered or understood directly).

40. Evid. Code § 731(a).

41. Evid. Code § 731(b) & (c).

1 The Lockyer-Isenberg Trial Court Funding Act (hereafter, the “Trial Court
2 Funding Act”),⁴² however, places responsibility for payment of trial court
3 operations with the state, not the county.⁴³ The courts, with state funds, pay for
4 “court operations,” as defined by the Trial Court Funding Act.⁴⁴

5 This development has implications for (1) employment of a court-appointed
6 expert, interpreter for a witness, or translator of a writing offered in evidence in a
7 criminal or juvenile case, and (2) employment of a court-appointed medical expert
8 in a civil case.

9 **Criminal or Juvenile Case**

10 Employment of a court-appointed expert in a criminal or juvenile case⁴⁵ is a
11 court operation within the meaning of the Trial Court Funding Act. Likewise,
12 employment of an interpreter for a witness in such a case is a court operation.⁴⁶
13 Because these matters are court operations, the court, not the county, should now
14 pay for the employment of such persons.

15 It is less clear whether court operations include employment of a translator of a
16 writing offered in evidence. The provisions that list court operations make no
17 specific reference to translation. Nevertheless, it seems likely that translation of a
18 writing offered in evidence in a criminal or juvenile case is a court operation, due
19 its functional similarity with court interpretation, which is a court operation.⁴⁷

20 For these reasons, the Commission tentatively recommends revising Section 731
21 to provide that, in a criminal or juvenile case, the court is responsible for paying a
22 court-appointed expert, an interpreter for a witness, or a translator of a writing
23 offered in evidence.⁴⁸

24 **Court-Appointed Medical Experts in Civil Cases**

25 Section 731 provides that the county may elect to pay for court-appointed
26 medical experts in civil cases. Under the Trial Court Funding Act, however, the
27 judicial branch is responsible for countywide administration of the trial courts.⁴⁹
28 The decision of whether to pay for court-appointed medical experts in civil cases
29 (or whether the parties pay), should therefore now belong to the court, not the

42. 1997 Cal. Stat. ch. 850; see generally Gov’t Code §§ 77000-77655.

43. Gov’t Code § 77200.

44. See *id.*; see also Gov’t Code § 77003 (defining “court operations”); Cal. R. Ct. 10.810 (same).

45. See Gov’t Code § 77003(a)(8); Cal. R. Ct. 10.810(d), Function 10 (court-appointed expert witness fees).

46. See Gov’t Code § 77003(a)(8); Cal. R. Ct. 10.810(d), Function 4 (court interpreters).

47. See Gov’t Code § 77003; Cal. R. Ct. 10.810(d), Function 4 (court interpreters).

48. See proposed amendment to Evid. Code § 731 *infra*.

49. See Gov’t Code § 77001(b).

1 county. The Commission tentatively recommends that Section 731 be revised
2 accordingly.⁵⁰

3 EMPLOYMENT, ASSIGNMENT, AND COMPENSATION OF 4 INTERPRETERS AND TRANSLATORS

5 Government Code Sections 26806, 68092, and 69894.5 relate to the
6 employment, assignment, and compensation of interpreters and translators.
7 Revisions to remove obsolete material from these provisions are discussed below.
8 The discussion begins with Section 68092. It then turns to Section 26806 and
9 finally to Section 69894.5, because these two discussions are interrelated.

10 **Section 68092: Compensation of an Interpreter or Translator in a Court Proceeding or a** 11 **Coroner's Case**

12 Government Code Section 68092 specifies who — the county, or the parties —
13 pays interpreters and translators.⁵¹ The section allocates responsibility for payment
14 of interpreters and translators based on whether the case is a criminal case, civil
15 case, or coroner's case (e.g., a coroner's inquest proceeding). In a criminal case or
16 coroners' case, the county must pay. In a civil case, the parties must pay. The
17 Commission has examined each of these three contexts and assessed whether the
18 statutory allocation is appropriate.

19 ***Criminal Case***

20 Subdivision (a) of Section 68092 provides that the county is to pay interpreters
21 and translators in a criminal case. Under the Trial Court Funding Act, however,
22 interpretation in a criminal case is a court operation, to be funded by the state.⁵²
23 The Commission therefore tentatively recommends revising the statute to require
24 the court to pay interpreters in a criminal case.⁵³

25 The Trial Court Funding Act does not make specific reference to translation.
26 Nevertheless, it appears that the court should pay for translation in a criminal case.
27 The only situation in which Section 68092 governs compensation for translation in
28 a criminal case appears to be one in which the court employs the translator.⁵⁴

50. See proposed amendment to Evid. Code § 731 *infra*.

51. Although Evidence Code Section 731 also specifies who pays interpreters and translators, it does so only as to an interpreter for a witness and a translator of a writing offered in evidence. See Evid. Code §§ 752(b), 753(b). It therefore appears that Section 68092 applies only to interpreters and translators other than those specified in Section 731. In other words, Section 68092 governs payment of interpreters and translators, but not an interpreter for a witness, nor a translator of a writing offered in evidence. See *id*.

52. See Gov't Code § 77003; Cal. R. Ct. 10.810(d), Function 10 (court interpreters).

53. See proposed amendment to Gov't Code § 68092 *infra*.

54. Compensation for translation in a criminal case governed by Section 68092 appears to arise only in relation to a document intended to be filed in a county of 900,000 or more persons. Translation of such a document is authorized by Government Code Section 26806(a), which specifies that the clerk of the court

1 Under former law, the county employed the translator.⁵⁵ Under existing law,
2 however, the court employs the translator.⁵⁶ As the employer of the translator, the
3 court, not the county, should be responsible for paying the translator.

4 In light of the above, the Commission tentatively recommends revising Section
5 68092 to reflect that the court, instead of the county, pays for translation in a
6 criminal case.⁵⁷

7 ***Coroner's Case***

8 Subdivision (a) of Section 68092 provides that the county is to pay interpreters
9 and translators in a coroner's case. That allocation of responsibility appears
10 appropriate.

11 Under the Trial Court Funding Act, court interpretation is a court operation.⁵⁸
12 However, neither interpretation nor translation in a coroner's case appears to be a
13 court operation, because they occur in a case conducted by a coroner, not a court
14 officer.⁵⁹ Therefore, neither interpretation nor translation in a coroner's case is a
15 court operation to be funded by the state. These functions should remain funded by
16 the county, as Section 68092 provides.⁶⁰

17 ***Civil Case***

18 Subdivision (b) of Section 68092 provides that the parties are to pay interpreters
19 and translators in a civil case, in a proportion ordered by the court. Subdivision (b)
20 also provides that if a county is a party to a civil case, the county's proportion is to
21 be paid in the same manner as in a criminal case ("from the county treasury upon
22 warrants drawn by the county auditor").⁶¹

23 Compensation of interpreters and translators in a criminal case, however, should
24 no longer be paid by the county.⁶² It therefore no longer makes sense to provide
25 that a county's proportion is to be paid in a civil case in the same manner as in a
26 criminal case. Accordingly, the Commission tentatively recommends deleting this
27 provision from Section 68092.⁶³

is to employ the translator. Compensation for translation of a writing offered in evidence is not governed by Section 68092, but by Evidence Code Section 731. See Evid. Code § 753.

55. See former Gov't Code § 26806 (1998 Cal. Stat. ch. 931, § 199).

56. See Gov't Code § 26806.

57. See subdivision (c) of the proposed amendment to Gov't Code § 68092 *infra*.

58. See Gov't Code § 77003(a)(8); Cal. R. Ct. 10.810, Function 4 (court interpreters).

59. See, e.g., Gov't Code §§ 27490-27512.

60. This conclusion is reinforced to some extent by other Government Code sections that give the county control over a coroner's fees, and in some circumstances, impose a coroner's expenses on the county. See, e.g., Gov't Code §§ 27471, 27472.

61. See Gov't Code § 68092(a).

62. See discussion of "Criminal Case" *supra*.

63. See subdivision (b) of the proposed amendment to Gov't Code § 68092 *infra*.

1 ***Fees vs. Compensation***

2 In addition to the revisions discussed above, the Commission recommends
3 another revision to Section 68092. Specifically, the section refers to payment of
4 interpreters' and translators' fees. Under the Trial Court Interpreter Employment
5 and Labor Relations Act, however, an interpreter is paid either a salary (e.g., as a
6 court employee), or a fee (e.g., as an independent contractor). To reflect that
7 situation, the Commission tentatively recommends revising the section to refer to
8 compensation, rather than fees.⁶⁴

9 **Section 26806: Foreign Language Interpreters in a County of 900,000 or More**

10 Government Code Section 26806 contains provisions on the employment,
11 assignment, and compensation of interpreters in a county with a population of
12 900,000 or more persons.

13 In particular, the section provides that a court clerk in a county of 900,000 or
14 more persons may employ as many interpreters as necessary to do the following:

- 15 • Assign interpreters as needed in criminal and juvenile cases.⁶⁵
- 16 • Assign an interpreter, who is employed to interpret in criminal and juvenile
17 cases, to interpret in a civil case when not needed in a criminal or juvenile
18 case.⁶⁶
- 19 • Assign an interpreter to translate any document intended for filing in any
20 civil or criminal action or proceeding.⁶⁷
- 21 • Assign an interpreter to translate any document intended for county
22 recordation.⁶⁸

23 The section was amended a few years ago by an omnibus bill relating to local
24 government.⁶⁹ The bill amended the section to provide that the court clerk, rather
25 than the county clerk, is responsible for the employment and assignment of the
26 interpreters.⁷⁰ Presumably, the amendments were to reflect (1) the enactment of
27 the Trial Court Funding Act, which made courts responsible for managing day-to-
28 day operations and for countywide trial court administration,⁷¹ and (2) the
29 enactment of the Trial Court Interpreter Employment and Labor Relations Act,
30 under which the courts — not the county — employ court interpreters.

64. See proposed amendment to Gov't Code § 68092 *infra*.

65. Gov't Code § 26806(b).

66. Gov't Code § 26806(c).

67. Gov't Code § 26806(a) & (d).

68. *Id.*

69. See 2004 Cal. Stat. ch. 118, § 13.

70. Compare Gov't Code § 26806 with former Gov't Code § 26806 (1998 Cal. Stat. ch. 831, § 199).

71. See Gov't Code § 77001.

1 Although these amendments helped to remove obsolete material, further reforms
2 appear warranted with regard to (1) translation of a document intended for county
3 recordation, (2) location of the material in the codes, and (3) modernization of the
4 provisions relating to compensation.

5 ***Translation of a Document Intended for County Recordation***

6 Section 26806 now correctly states that the court clerk is responsible for the
7 employment and assignment of an interpreter in court proceedings.

8 However, the statute now also states that the court clerk is responsible for the
9 employment and assignment of an interpreter to translate a document intended for
10 county recordation. County recordation is a county matter, not a court operation.
11 Accordingly, the Commission tentatively recommends revising the statute to
12 provide that such responsibility belongs to the county clerk.⁷²

13 ***Location in the Codes***

14 Section 26806 is located in an article of the Government Code relating to duties
15 of a county clerk. This is an appropriate location for the provisions that relate to
16 duties of the county clerk — i.e., the employment and assignment of an interpreter
17 to translate a document intended for county recordation.

18 However, it is not an appropriate location for provisions that relate to duties that
19 now belong to the court clerk — i.e., the employment and assignment of an
20 interpreter in court proceedings. Those provisions would be better located in
21 Government Code Section 69894.5, which authorizes a court to employ persons to
22 interpret and translate as specified in Section 26806.⁷³ In this new location, the
23 provisions would be in close proximity to other provisions that govern a county
24 based on population size and relate to court employees.⁷⁴

25 Accordingly, the Commission tentatively recommends that the substance of
26 Section 26806 relating to duties of the court clerk (employment and assignment of
27 an interpreter in court proceedings) be relocated to Section 69894.5.⁷⁵

28 ***Modernization of Compensation Provisions***

29 Some of the material in Section 26806 appears to be obsolete due to the passage
30 of time.

31 In particular, subdivision (d) specifies the amount of compensation for the
32 translation of a document intended for county recordation, and for a carbon copy
33 of the translation. Because the reference to a carbon copy appears to be obsolete,

72. See subdivision (a) of the proposed amendment to Gov't Code § 26806 *infra*.

73. Government Code Section 69894.5 states that the “court may by rule employ and assign officers or attachés to perform the duties outlined in Section 26806 of the Government Code.”

74. See, e.g., Gov't Code §§ 69894.3, 69894.4, 69903.

75. See proposed amendments to Gov't Code §§ 26806, 69894.5 *infra*.

1 the Commission tentatively recommends replacing it with a general reference to a
2 copy.⁷⁶

3 In addition, it appears that the specified amount of compensation is outdated and
4 no longer used.⁷⁷ Apparently, the current practice is to agree to the amount.⁷⁸
5 Accordingly, the Commission tentatively recommends revising the section to
6 delete the specified amount, and to provide that the amount is to be determined by
7 agreement.⁷⁹

8 **Section 69894.5: Employment and Assignment of Interpreters in Court Proceedings**

9 As discussed above, the Commission tentatively recommends that the substance
10 of Government Code Section 26806 relating to interpretation and translation in
11 court proceedings be relocated to Government Code Section 69894.5.⁸⁰ Some of
12 that substance, and parts of Section 69894.5, should be further revised.

13 In particular, revisions should be made to: (1) delete obsolete references to the
14 municipal courts, (2) modernize the provisions relating to compensation,
15 (3) eliminate deposits into the county treasury for court interpretation and
16 translation, (4) update the reference to employment of officers and attachés by
17 rule, and (5) ensure that a constitutional requirement is not overlooked.

18 ***Municipal Courts***

19 Subdivisions (b) and (c) of Section 26806 contain references to the municipal
20 court. However, municipal courts no longer exist following their unification with
21 the superior court. Accordingly, the Commission tentatively recommends deleting
22 those references.⁸¹

23 ***Modernization of Compensation Provisions***

24 Subdivision (d) of Section 26806 specifies the amount of compensation for an
25 interpreter to translate a document intended to be filed in a court proceeding. The
26 provision also specifies the cost for a carbon copy of the translation.

76. See proposed amendment to Gov't Code § 26806 *infra*.

77. Section 26806 has not been amended to change the amount of compensation in the past fifty years. See 1947 Cal. Stat. ch. 671, § 1. The applicable definition of “folio” (one hundred words), which is used to calculate the amount by measuring the length of a translation, has remained the same since it was enacted in 1963. See Gov't Code § 27360.5 (defining “folio”); 1963 Cal. Stat. ch. 22, § 1.

78. See Email from Mary Lou Aranguren, Bay Area Court Interpreters and the California Federation of Interpreters, to Lynne Urman (Jan. 18, 2002) (on file with Commission).

79. See proposed amendment to Gov't Code § 26806 *infra*.

80. See discussion of “Location in the Codes” *supra*.

81. Compare Gov't Code § 26806(b) & (c) with paragraphs (b)(2) & (3) of the proposed amendment to Gov't Code § 69894.5 *infra*.

1 These compensation terms are the same as for translating a document intended
2 for county recordation, and for preparing a carbon copy of such a translation. As
3 discussed above, they appear to be obsolete.⁸²

4 Accordingly, the Commission tentatively recommends deleting the specified
5 amount of compensation, and providing instead that the amount is to be
6 determined by agreement, consistent with current practice.⁸³ The Commission also
7 tentatively recommends replacing the reference to a carbon copy with a general
8 reference to a copy.⁸⁴

9 *Deposits into County Treasury*

10 Subdivisions (c) and (d) of Section 26806 provide that the parties' payment for
11 an interpreter or translator is to be deposited into the county treasury. These
12 provisions appear to be obsolete, due to the Trial Court Funding Act and the Trial
13 Court Interpreter Employment and Labor Relations Act, under which the courts
14 manage and pay for court interpreters.

15 Court interpreter fees should no longer be deposited into the county treasury,
16 because providing such services is a court operation, not a county responsibility.⁸⁵
17 The proper treatment of court translation fees is less clear, but for the reasons
18 previously discussed, court translation services are probably a court operation, not
19 a county responsibility. If so, the fees for such services should no longer be
20 deposited into the county treasury.

21 It is unclear where exactly fees for court interpretation and translation should be
22 deposited, instead of the county treasury. The Commission tentatively
23 recommends providing that such fees are to be deposited into the Trial Court Trust
24 Fund.⁸⁶ The Commission specially solicits comment on this issue.

25 *Officers and Attachés*

26 Section 69894.5 provides that a "court may by rule employ and assign officers
27 and attachés to perform the duties outlined in Section 26806."

28 This authorization to employ officers and attachés is superseded by the Trial
29 Court Interpreter Employment and Labor Relations Act, which governs
30 comprehensively the system of employing court interpreters.⁸⁷

82. See discussion of "Modernization of Compensation Provisions" *supra*.

83. Compare Gov't Code § 26806(d) with paragraph (b)(4) of the proposed amendment to Gov't Code § 69894.5 *infra*. The Trial Court Interpreter Employment and Labor Relations Act is inapplicable because it only applies to spoken language interpretation, not translation. Cf. Gov't Code §§ 71802(a), 71806(a).

84. Compare Gov't Code § 26806(d) with paragraph (b)(4) of the proposed amendment to Gov't Code § 69894.5 *infra*.

85. See Cal. R. Ct. 10.810, Function 4 (court interpreters).

86. See paragraphs (b)(3) & (4) of the proposed amendment to Gov't Code § 69894.5 *infra*.

87. For example, the act specifies conditions under which courts may use an interpreter who is an independent contractor (rather than an interpreter who is a court employee). See Gov't Code § 71802.

1 To reflect this development, the Commission tentatively recommends revising
2 Section 69894.5 to refer to the employment of persons pursuant to the Trial Court
3 Interpreter Employment and Labor Relations Act, instead of employment of
4 officers and attachés by rule.⁸⁸

5 ***Constitutional Requirement***

6 Section 26806 requires a court clerk in a county of 900,000 or more persons to
7 assign an interpreter to a criminal case when needed.

8 However, the California Constitution includes a broader requirement. It provides
9 that “[a] person unable to understand English who is charged with a crime has a
10 right to an interpreter throughout the proceedings.”⁸⁹

11 If the provisions in Section 26806 relating to the assignment of an interpreter in
12 a criminal case were relocated verbatim to Section 69894.5, that could create a
13 misimpression that the right to an interpreter in a criminal case applies only in a
14 county of 900,000 or more persons. Such a misimpression could be avoided by
15 restating the constitutional requirement in Section 69894.5, alongside the
16 provisions from Section 26806 that apply only in a county of 900,000 or more
17 persons.⁹⁰

18 **DEFINITION OF “SUBORDINATE JUDICIAL OFFICER”**

19 In previous work on trial court restructuring, the Commission recommended
20 revising Government Code Section 71601 to reflect that municipal courts no
21 longer exist. The Commission also recommended technical revisions to that
22 section, relating to the definition of “subordinate judicial officer” for purposes of
23 the Trial Court Employment Protection and Governance Act.⁹¹

24 The Legislature twice enacted bills that would implement these
25 recommendations.⁹² Neither bill went into effect, however, due to technical
26 reasons, unrelated to the merits of the recommendations.⁹³

27 Subsequently, a bill from another source amended the section to delete the
28 obsolete reference to the municipal court.⁹⁴ Another bill further amended the

88. See paragraph (c) of the proposed amendment to Gov’t Code § 69894.5 *infra*.

89. Cal. Const. art. I, § 14.

90. See proposed amendment to Gov’t Code § 69894.5 *infra*.

91. See *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm’n Reports 305, 312-13, 367-71 (2006).

92. See 2002 Cal. Stat. ch. 784, § 358; 2002 Cal. Stat. ch. 905, § 2.

93. The bills were chaptered out. See *id.* A bill is chaptered out when another bill affecting the same statute is enacted later in the legislative session. The later-enacted bill takes effect, and the earlier one does not. See Gov’t Code § 9605.

94. See 2007 Cal. Stat. ch. 130, § 136.

1 section to delete the reference to “judge pro tempore” from the definition of
2 “subordinate judicial officer.”⁹⁵

3 Technical revisions to the definition of “subordinate judicial officer” that were
4 developed during the Commission’s prior work would further improve the
5 definition. In particular, the Commission tentatively recommends (1) adding
6 “child support commissioner,” “traffic trial commissioner,” and “juvenile hearing
7 officer” to the definition, and (2) revising the existing reference to a “juvenile
8 referee” to refer to a “juvenile court referee.”⁹⁶ These revisions would make the
9 definition more clear, complete, and technically accurate.

10 FURTHER WORK

11 This tentative recommendation does not deal with all remaining statutes that
12 need revision due to trial court restructuring. The Commission will continue to
13 make recommendations addressing obsolete statutes as issues are resolved and
14 time warrants. Failure to address a particular statute in this tentative
15 recommendation should not be construed to mean that the Commission has
16 decided the statute should be preserved. The statute may be the subject of a future
17 recommendation by the Commission.

18 IMPACT OF THE PROPOSED REFORMS

19 The recommended legislation would remove obsolete material from statutes.
20 That would help avoid confusion and prevent disputes, thereby reducing litigation
21 expenses and conserving judicial resources.
22

95. See 2008 Cal. Stat. ch. 218, § 4.

96. See proposed amendment to Code Civ. Proc. § 71601 *infra*.

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PROPOSED LEGISLATION

1 **Code Civ. Proc. § 1068 (amended). Courts authorized to grant writ of review**

2 SEC. _____. Section 1068 of the Code of Civil Procedure is amended to read:

3 1068. (a) A writ of review may be granted by any court when an inferior
4 tribunal, board, or officer, exercising judicial functions, has exceeded the
5 jurisdiction of ~~such~~ that tribunal, board, or officer, and there is no appeal, nor, in
6 the judgment of the court, any plain, speedy, and adequate remedy.

7 (b) The appellate division of the superior court may grant a writ of review
8 directed to the superior court in a limited civil case subject to the appellate
9 jurisdiction of the appellate division, or in a misdemeanor or infraction case
10 subject to the appellate jurisdiction of the appellate division. Where the appellate
11 division grants a writ of review directed to the superior court, the superior court is
12 an inferior tribunal for purposes of this chapter.

13 **Comment.** Subdivision (b) of Section 1068 is amended to more closely track the language of
14 Article VI, Section 10, of the California Constitution. This is not a substantive change.

15 The amendment helps clarify the treatment of a small claims case. An appeal from a judgment
16 in a small claims case is not within the jurisdiction of the appellate division. Rather, such an
17 appeal consists of a new hearing before a judicial officer other than the judicial officer who heard
18 the action in the small claims division. See Section 116.770(a). Because the appellate division
19 lacks jurisdiction of a small claims appeal, the appellate division also lacks authority to review a
20 judgment or a prejudgment ruling in a small claims case by way of extraordinary writ. See Cal.
21 Const. art. VI, § 10.

22 Section 1068 is also amended to make a stylistic revision.

23 **Code Civ. Proc. § 1085 (amended). Courts authorized to grant writ of mandate**

24 SEC. _____. Section 1085 of the Code of Civil Procedure is amended to read:

25 1085. (a) A writ of mandate may be issued by any court to any inferior tribunal,
26 corporation, board, or person, to compel the performance of an act which the law
27 specially enjoins, as a duty resulting from an office, trust, or station, or to compel
28 the admission of a party to the use and enjoyment of a right or office to which the
29 party is entitled, and from which the party is unlawfully precluded by ~~such~~ that
30 inferior tribunal, corporation, board, or person.

31 (b) The appellate division of the superior court may grant a writ of mandate
32 directed to the superior court in a limited civil case subject to the appellate
33 jurisdiction of the appellate division, or in a misdemeanor or infraction case
34 subject to the appellate jurisdiction of the appellate division. Where the appellate
35 division grants a writ of ~~review~~ mandate directed to the superior court, the superior
36 court is an inferior tribunal for purposes of this chapter.

37 **Comment.** The first sentence of subdivision (b) of Section 1085 is amended to more closely
38 track the language of Article VI, Section 10, of the California Constitution. This is not a
39 substantive change.

40 The amendment helps clarify the treatment of a small claims case. An appeal from a judgment
41 in a small claims case is not within the jurisdiction of the appellate division. Rather, such an

1 appeal consists of a new hearing before a judicial officer other than the judicial officer who heard
2 the action in the small claims division. See Section 116.770(a). Because the appellate division
3 lacks jurisdiction of a small claims appeal, the appellate division also lacks authority to review a
4 judgment or a prejudgment ruling in a small claims case by way of extraordinary writ. See Cal.
5 Const. art. VI, § 10.

6 The second sentence of subdivision (b) is amended to refer to a writ of mandate instead of a
7 writ of review.

8 Section 1085 is also amended to make a stylistic revision.

9 **Code Civ. Proc. § 1103 (amended). Courts authorized to grant writ of prohibition**

10 SEC. _____. Section 1103 of the Code of Civil Procedure is amended to read:

11 1103. (a) A writ of prohibition may be issued by any court to an inferior tribunal
12 or to a corporation, board, or person, in all cases where there is not a plain, speedy,
13 and adequate remedy in the ordinary course of law. It is issued upon the verified
14 petition of the person beneficially interested.

15 (b) The appellate division of the superior court may grant a writ of prohibition
16 directed to the superior court in a limited civil case subject to the appellate
17 jurisdiction of the appellate division, or in a misdemeanor or infraction case
18 subject to the appellate jurisdiction of the appellate division. Where the appellate
19 division grants a writ of ~~review~~ prohibition directed to the superior court, the
20 superior court is an inferior tribunal for purposes of this chapter.

21 **Comment.** The first sentence of subdivision (b) of Section 1103 is amended to more closely
22 track the language of Article VI, Section 10, of the California Constitution. This is not a
23 substantive change.

24 The amendment helps clarify the treatment of a small claims case. An appeal from a judgment
25 in a small claims case is not within the jurisdiction of the appellate division. Rather, such an
26 appeal consists of a new hearing before a judicial officer other than the judicial officer who heard
27 the action in the small claims division. See Section 116.770(a). Because the appellate division
28 lacks jurisdiction of a small claims appeal, the appellate division also lacks authority to review a
29 judgment or a prejudgment ruling in a small claims case by way of extraordinary writ. See Cal.
30 Const. art. VI, § 10.

31 The second sentence of subdivision (b) is amended to refer to a writ of prohibition instead of a
32 writ of review.

33 **Evid. Code § 731 (amended). Compensation of court-appointed expert**

34 SEC. _____. Section 731 of the Evidence Code is amended to read:

35 731. (a) In all criminal actions and juvenile court proceedings, the compensation
36 fixed under Section 730 shall be a charge against the ~~county in which such action~~
37 ~~or proceeding is pending and shall be paid out of the treasury of such county on~~
38 ~~order of the court.~~

39 (b) In any county in which the ~~board of supervisors~~ court so provides, the
40 compensation fixed under Section 730 for medical experts in civil actions in ~~such~~
41 that county shall be a charge against ~~and paid out of the treasury of such county on~~
42 ~~order of the court.~~

43 (c) Except as otherwise provided in this section, in all civil actions, the
44 compensation fixed under Section 730 shall, in the first instance, be apportioned

1 and charged to the several parties in ~~such~~ a proportion as the court may determine
2 and may thereafter be taxed and allowed in like manner as other costs.

3 **Comment.** Subdivisions (a) and (b) of Section 731 are amended to reflect the enactment of the
4 Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code
5 §§ 77000-77655). See, e.g., Gov't Code §§ 77001 (local trial court management), 77003 ("court
6 operations" defined), 77200 (state funding of "court operations"); see also Cal. R. Ct. 10.810,
7 Functions 4 (court interpreters) & 10 (referring to court-appointed witness fees).

8 Subdivisions (b) and (c) are also amended to make stylistic revisions.

9 **Gov't Code § 26806 (amended).** Foreign language interpreters in county of 900,000 or more

10 SEC. ____ . Section 26806 of the Government Code is amended to read:

11 26806. (a) In counties having a population of 900,000 or over, the county clerk
12 ~~of the court~~ may employ as many foreign language interpreters as may be
13 necessary to ~~interpret in criminal cases in the superior court, and in the juvenile~~
14 ~~court within the county and to~~ translate documents intended for filing in any civil
15 ~~or criminal action or proceeding or for~~ recordation in the county recorder's office.

16 ~~(b) The clerk of the superior court, shall, when interpreters are needed, assign~~
17 ~~the interpreters so employed to interpret in criminal and juvenile cases in the~~
18 ~~superior court. When their services are needed, the clerk shall also assign~~
19 ~~interpreters so employed to interpret in criminal cases in municipal courts.~~

20 ~~(c) The clerk of the court may also assign the interpreters so employed to~~
21 ~~interpret in civil cases in superior and municipal courts when their services are not~~
22 ~~required in criminal or juvenile cases and when so assigned, they shall collect~~
23 ~~from the litigants the fee fixed by the court and shall deposit the same in the~~
24 ~~county treasury.~~

25 ~~(d) The interpreters so employed shall, when assigned to do so by the county~~
26 ~~clerk of the court, translate documents to be recorded or to be filed in any civil or~~
27 ~~criminal action or proceeding. The fee to be collected for translating each such~~
28 ~~document shall be three dollars (\$3) per folio for the first folio or part thereof, and~~
29 ~~two cents (\$0.02) for each word thereafter. For or preparing a carbon copy of such~~
30 ~~the translation made at the time of preparing the original, the fee shall be twelve~~
31 ~~cents (\$0.12) per folio or any part thereof. All such fees shall be determined by~~
32 agreement between the county and the interpreter preparing the translation. The
33 fee shall be deposited in the county treasury.

34 **Comment.** Section 26806 is amended to delete the provisions relating to employment and
35 assignment of an interpreter in court proceedings. Those provisions are relocated, with revisions,
36 to Section 69894.5.

37 Section 26806 is further amended to reflect that the county clerk, not the court, may employ
38 and assign an interpreter to translate a document intended for recordation in the county recorder's
39 office. In such circumstances, translation is a county matter, not a court operation. See Cal. R. Ct.
40 10.810 (listing matters classified as court operations).

41 Former subdivision (d) (relabeled as subdivision (b)) is amended to delete the specified fees for
42 translating a document and preparing a carbon copy of the translation. The reference to a carbon
43 copy is obsolete, and is replaced with a general reference to a copy. Consistent with current
44 practice, the fees for a translation and for a copy of the translation are to be determined by
45 agreement between the county and the interpreter.

Section 26806 is also amended to make stylistic revisions.

Gov't Code § 53647.5 (amended). Interest on bail deposits

53647.5. Notwithstanding any other provision of law, interest earned on any bail money deposited by a court in a bank account pursuant to Section 1463.1 of the Penal Code and Section 53679 of this code shall, if the ~~board of supervisors~~ **[Judicial Council or court]** so directs, be allocated for the support of ~~the courts in that county~~ that court.

Comment. Section 53647.5 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See, e.g., Gov't Code §§ 77001 (local trial court management), 77003 ("court operations" defined), 77200 (state funding of "court operations"); see also Cal. R. Ct. 10.810.

Note. The Commission specially solicits comment on which entity — the Judicial Council or the court that makes the deposit — should decide whether interest earned on bank deposits of bail money will be allocated for the support of the court that makes the deposit.

Gov't Code § 53679 (amended). Deposits

SEC. _____. Section 53679 of the Government Code is amended to read:

53679. So far as possible, all money belonging to a local agency under the control of any of its officers or employees other than the treasurer ~~or a judge or officer of a municipal court~~ shall, and all money deposited as bail coming into the possession of a judge or officer of a municipal superior court may, be deposited as active deposits in the state or national bank, inactive deposits in the state or national bank or state or federal association, federal or state credit union, or federally insured industrial loan company in this state selected by the officer, employee, or judge of the court. For purposes of this section, an officer or employee of a local agency and a judge or officer of a municipal superior court are prohibited from depositing local agency funds or money coming into their possession into a state or federal credit union if an officer or employee of the local agency, or a judge or officer of a municipal superior court, also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or supervisory committee, of the particular state or federal credit union. Such money is subject to this article except:

(a) Deposits in an amount less than that insured pursuant to federal law are not subject to this article. For deposits in excess of the amount insured under any federal law, a contract in accordance with Section 53649 is required and the provisions of this article shall apply.

(b) Interest is not required on money deposited in an active deposit by a judge or officer of a municipal superior court.

(c) Interest is not required on money deposited in an active deposit by an officer having control of a revolving fund created pursuant to Chapter 2 (commencing with Section 29300) of Division 3 of Title 3.

(d) Interest is not required on money deposited in an active deposit by an officer having control of a special fund established pursuant to ~~Articles~~ Article 5

(commencing with Section 29400) or Article 6 (commencing with Section 29430) of Chapter 2 of Division 3 of Title 3.

Comment. Section 53679 is amended to reflect the unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution. The provisions relating to bank deposits by a court are amended to conform with Penal Code Section 1463.1, as amended in 2001. Those amendments expanded Section 53679 to apply to any trial court, but only as to bail money. See 2001 Cal. Stat. ch. 812, § 25.

Subdivisions (a) and (d) are amended to make stylistic revisions.

Gov't Code § 68092 (amended). Compensation of interpreters and translators in court proceedings and coroners' cases

SEC. _____. Section 68092 of the Government Code is amended to read:

68092. Interpreters' and translators' fees compensation shall be paid:

(a) ~~In criminal cases and in coroners' cases, from the county treasury upon warrants drawn by the county auditor, when so ordered by the court or by the coroner, as the case may be.~~

(b) In civil cases, by the litigants, in ~~such~~ proportions as the court may direct, to be taxed and collected as other costs. ~~The county's proportion of such fees so ordered to be paid in any civil suit to which the county is a party shall be paid in the same manner as such fees are paid in criminal cases.~~

(c) In criminal cases, by the court.

Comment. The introductory clause of Section 68092 is amended to refer to compensation, rather than fees. Under the Trial Court Interpreter Employment and Labor Relations Act (Sections 71801-71829), interpreters may be paid a salary (e.g., as court employees), or may be paid on a daily basis (e.g., as independent contractors). See Section 71802.

Subdivisions (a) and (b) are amended, and subdivision (c) is added, to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). Under that act, the state, not the county, funds the cost of "court operations." See, e.g., Sections 77003 ("court operations" defined), 77200 (state funding of "court operations"). Interpretation for a court proceeding is a court operation and therefore payable by the court and ultimately by the state. See Cal. R. Ct. 810, Function 4 (court interpreters); see also Section 26806 (cost of translation in criminal case is to be paid by court). In contrast, interpretation for a coroner's case is not a court operation and thus remains payable by the county. See Cal. R. Ct. 810 (listing matters classified as court operations).

For provisions governing the cost of translation of a writing offered in evidence, see Evidence Code Section 753. For provisions governing compensation of an interpreter of a witness, see Evidence Code Section 752.

Section 68092 is also amended to make stylistic revisions.

Gov't Code § 69894.5 (amended). Employment and assignment of interpreters in court proceedings

SEC. _____. Section 69894.5 of the Government Code is amended to read:

69894.5. (a) A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.

(b) In a county having a population of 900,000 or over:

(1) The clerk of the court may employ as many foreign language interpreters as may be necessary to interpret in criminal cases in the superior court, and in the

1 juvenile court within the county, and to translate documents intended for filing in
2 any civil or criminal action or proceeding.

3 (2) The clerk of the court shall, when interpreters are needed, assign the
4 interpreters so employed to interpret in criminal and juvenile cases in the superior
5 court.

6 (3) The clerk of the court may also assign the interpreters so employed to
7 interpret in civil cases in the superior court when their services are not required in
8 criminal or juvenile cases. When so assigned, an interpreter shall collect from the
9 litigants the fee fixed by the court and shall deposit that fee in the Trial Court
10 Trust Fund.

11 (4) The interpreters so employed shall, when assigned to do so by the clerk of
12 the court, translate documents to be filed in any civil or criminal action or
13 proceeding. The fee to be collected for translating each document or preparing a
14 copy of the translation shall be determined by agreement between the court and
15 the interpreter preparing the translation. The fee shall be deposited in the Trial
16 Court Trust Fund.

17 (c) The court may ~~by rule~~ employ and assign ~~officers or attachés~~ persons to
18 perform the duties outlined in ~~Section 26806 of the Government Code~~ this section
19 as provided in the Trial Court Interpreter Employment and Labor Relations Act,
20 Chapter 7.5 (commencing with Section 71800) of Title 8.

21 **Comment.** Subdivision (a) is added to Section 69894.5 to restate the constitutional
22 requirement of a court interpreter in a criminal case (Cal. Const. art. I, § 14), which applies
23 regardless of the size of the county. Courts have recognized that the right exists in a juvenile case
24 in which the juvenile is charged with a crime. See, e.g., *In re Dung*, 160 Cal. App. 3d 667, 708-
25 09, 206 Cal. Rptr. 772 (1984); see also *In re Raymundo B.*, 203 Cal. App. 3d 1447, 250 Cal. Rptr.
26 812 (1988).

27 Subdivision (b)(1) continues former Section 26806(a) without substantive change, as it
28 pertained to employment and assignment of interpreters in court proceedings.

29 Subdivision (b)(2) continues the first sentence of former Section 26806(b) without substantive
30 change. The second sentence of former Section 26806(b), relating to assignment of interpreters in
31 criminal cases in municipal court, is not continued due to the unification of the municipal and
32 superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

33 Subdivision (b)(3) continues former Section 26806(c), with revisions to (1) reflect the
34 unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of
35 the California Constitution, and (2) reflect the enactment of the Lockyer-Isenberg Trial Court
36 Funding Act, 1997 Cal. Stat. ch. 850 (see generally, Sections 77000-77655). See, e.g., Sections
37 77001 (local trial court management), 77003 (“court operations” defined), 77220 (state funding of
38 “court operations”); see also Cal. R. Ct. 10.810, Function 4 (court interpreters).

39 Subdivision (b)(4) continues former Section 26806(d), as it pertained to translation of
40 documents to be filed in court proceedings, with revisions to (1) reflect the enactment of the
41 Lockyer-Isenberg Trial Court Funding Act, and (2) delete the specified fees for translating a
42 document and preparing a carbon copy of the translation. The reference to a carbon copy is
43 obsolete, and is replaced with a general reference to a copy. Consistent with current practice, the
44 fees for a translation and for a copy of the translation are to be determined by agreement between
45 the court and the interpreter.

46 Subdivision (c) contains the material previously in this section, with revisions to reflect the
47 enactment of the Trial Court Interpreter Employment and Labor Relations Act, which now
48 comprehensively governs the system of employing court interpreters.

1 **Note.** The Commission specially solicits comment on whether the Trial Court Trust Fund is
2 the appropriate place for the deposits.

3 **Gov't Code § 71381 (amended). Controller's accounting system**

4 SEC. _____. Section 71381 of the Government Code is amended to read:
5 ~~71381. Such system may provide for bank accounts for each municipal court, in~~
6 ~~which money received by such court may be deposited and disbursed as provided~~
7 ~~therein, and for such~~ The accounting system under this article may provide for any
8 records, reports, and procedures as the Controller may deem necessary to carry out
9 the purposes of this article.

10 **Comment.** Section 71381 is amended to reflect unification of the municipal and superior
11 courts pursuant to former Section 5(e) of Article VI of the California Constitution. For guidance
12 on bank accounts for the superior courts, see Section 68084.

13 **Gov't Code § 71601 (amended). Definition of "subordinate judicial officer"**

14 SEC. _____. Section 71601 of the Government Code is amended to read:
15 71601. For purposes of this chapter, the following definitions shall apply:
16 (a) "Appointment" means the offer to and acceptance by a person of a position
17 in the trial court in accordance with this chapter and the trial court's personnel
18 policies, procedures, and plans.
19 (b) "Employee organization" means either of the following:
20 (1) Any organization that includes trial court employees and has as one of its
21 primary purposes representing those employees in their relations with that trial
22 court.
23 (2) Any organization that seeks to represent trial court employees in their
24 relations with that trial court.
25 (c) "Hiring" means appointment as defined in subdivision (a).
26 (d) "Mediation" means effort by an impartial third party to assist in reconciling a
27 dispute regarding wages, hours, and other terms and conditions of employment
28 between representatives of the trial court and the recognized employee
29 organization or recognized employee organizations through interpretation,
30 suggestion, and advice.
31 (e) "Meet and confer in good faith" means that a trial court or representatives as
32 it may designate, and representatives of recognized employee organizations, shall
33 have the mutual obligation personally to meet and confer promptly upon request
34 by either party and continue for a reasonable period of time in order to exchange
35 freely information, opinions, and proposals, and to endeavor to reach agreement
36 on matters within the scope of representation. The process should include adequate
37 time for the resolution of impasses where specific procedures for resolution are
38 contained in this chapter or in a local rule, or when the procedures are utilized by
39 mutual consent.
40 (f) "Personnel rules," "personnel policies, procedures, and plans," and "rules and
41 regulations" mean policies, procedures, plans, rules, or regulations adopted by a

1 trial court or its designee pertaining to conditions of employment of trial court
2 employees, subject to meet and confer in good faith.

3 (g) “Promotion” means promotion within the trial court as defined in the trial
4 court’s personnel policies, procedures, and plans, subject to meet and confer in
5 good faith.

6 (h) “Recognized employee organization” means an employee organization that
7 has been formally acknowledged to represent trial court employees by the county
8 under Sections 3500 to 3510, inclusive, prior to the implementation date of this
9 chapter, or by the trial court under former Rules 2201 to 2210, inclusive, of the
10 California Rules of Court, as those rules read on April 23, 1997, Sections 70210 to
11 70219, inclusive, or Article 3 (commencing with Section 71630).

12 (i) “Subordinate judicial officer” means an officer appointed to perform
13 subordinate judicial duties as authorized by Section 22 of Article VI of the
14 California Constitution, including, but not limited to, a court commissioner,
15 probate commissioner, child support commissioner, traffic trial commissioner,
16 referee, traffic referee, and juvenile court referee, and juvenile hearing officer.

17 (j) “Transfer” means transfer within the trial court as defined in the trial court’s
18 personnel policies, procedures, and plans, subject to meet and confer in good faith.

19 (k) “Trial court” means a superior court.

20 (l) “Trial court employee” means a person who is both of the following:

21 (1) Paid from the trial court’s budget, regardless of the funding source. For the
22 purpose of this paragraph, “trial court’s budget” means funds from which the
23 presiding judge of a trial court, or his or her designee, has authority to control,
24 authorize, and direct expenditures, including, but not limited to, local revenues, all
25 grant funds, and trial court operations funds.

26 (2) Subject to the trial court’s right to control the manner and means of his or her
27 work because of the trial court’s authority to hire, supervise, discipline, and
28 terminate employment. For purposes of this paragraph only, the “trial court”
29 includes the judges of a trial court or their appointees who are vested with or
30 delegated the authority to hire, supervise, discipline, and terminate.

31 (m) A person is a “trial court employee” if and only if both paragraphs (1) and
32 (2) of subdivision (l) are true irrespective of job classification or whether the
33 functions performed by that person are identified in Rule 10.810 of the California
34 Rules of Court. “Trial court employee” includes those subordinate judicial officers
35 who satisfy paragraphs (1) and (2) of subdivision (l). The phrase “trial court
36 employee” does not include temporary employees hired through agencies, jurors,
37 individuals hired by the trial court pursuant to an independent contractor
38 agreement, individuals for whom the county or trial court reports income to the
39 Internal Revenue Service on a Form 1099 and does not withhold employment
40 taxes, sheriffs, temporary judges, and judges whether elected or appointed. Any
41 temporary employee, whether hired through an agency or not, shall not be
42 employed in the trial court for a period exceeding 180 calendar days, except that
43 for court reporters in a county of the first class, a trial court and a recognized

1 employee organization may provide otherwise by mutual agreement in a
2 memorandum of understanding or other agreement.

3 **Comment.** Subdivision (i) of Section 71601 is amended to expressly refer to a child support
4 commissioner, traffic trial commissioner, and juvenile hearing officer. See former Section 72450
5 (traffic trial commissioners), Fam. Code §§ 4250-4253 (child support commissioners); Welf. &
6 Inst. Code § 255 (juvenile hearing officers).

7 Subdivision (i) is also amended for consistency of terminology. See Gov't Code § 70045.4
8 (juvenile court referee); Penal Code § 853.6a (same); Veh. Code § 40502 (same); Welf. & Inst.
9 Code § 264 (same).

10 **Penal Code § 13510 (amended). Rules establishing minimum standards**

11 SEC. ____ . Section 13510 of the Penal Code is amended to read:

12 13510. (a) For the purpose of raising the level of competence of local law
13 enforcement officers, the commission shall adopt, and may from time to time
14 amend, rules establishing minimum standards relating to physical, mental, and
15 moral fitness that shall govern the recruitment of any city police officers, peace
16 officer members of a county sheriff's office, marshals or deputy marshals ~~of a~~
17 municipal who serve a superior court, peace officer members of a county
18 coroner's office notwithstanding Section 13526, reserve officers, as defined in
19 subdivision (a) of Section 830.6, police officers of a district authorized by statute
20 to maintain a police department, peace officer members of a police department
21 operated by a joint powers agency established by Article 1 (commencing with
22 Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code,
23 regularly employed and paid inspectors and investigators of a district attorney's
24 office, as defined in Section 830.1, who conduct criminal investigations, peace
25 officer members of a district, safety police officers and park rangers of the County
26 of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31, or
27 housing authority police departments.

28 The commission also shall adopt, and may from time to time amend, rules
29 establishing minimum standards for training of city police officers, peace officer
30 members of county sheriff's offices, marshals or deputy marshals ~~of a municipal~~
31 who serve a superior court, peace officer members of a county coroner's office
32 notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of
33 Section 830.6, police officers of a district authorized by statute to maintain a
34 police department, peace officer members of a police department operated by a
35 joint powers agency established by Article 1 (commencing with Section 6500) of
36 Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed
37 and paid inspectors and investigators of a district attorney's office, as defined in
38 Section 830.1, who conduct criminal investigations, peace officer members of a
39 district, safety police officers and park rangers of the County of Los Angeles, as
40 defined in subdivisions (a) and (b) of Section 830.31, and housing authority police
41 departments.

42 These rules shall apply to those cities, counties, cities and counties, and districts
43 receiving state aid pursuant to this chapter and shall be adopted and amended

1 pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3
2 of Title 2 of the Government Code.

3 (b) The commission shall conduct research concerning job-related educational
4 standards and job-related selection standards to include vision, hearing, physical
5 ability, and emotional stability.

6 Job-related standards that are supported by this research shall be adopted by the
7 commission prior to January 1, 1985, and shall apply to those peace officer classes
8 identified in subdivision (a). The commission shall consult with local entities
9 during the conducting of related research into job-related selection standards.

10 (c) For the purpose of raising the level of competence of local public safety
11 dispatchers, the commission shall adopt, and may from time to time amend, rules
12 establishing minimum standards relating to the recruitment and training of local
13 public safety dispatchers having a primary responsibility for providing dispatching
14 services for local law enforcement agencies described in subdivision (a), which
15 standards shall apply to those cities, counties, cities and counties, and districts
16 receiving state aid pursuant to this chapter.

17 These standards also shall apply to consolidated dispatch centers operated by an
18 independent public joint powers agency established pursuant to Article 1
19 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the
20 Government Code when providing dispatch services to the law enforcement
21 personnel listed in subdivision (a).

22 Those rules shall be adopted and amended pursuant to Chapter 3.5 (commencing
23 with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As
24 used in this section, “primary responsibility” refers to the performance of law
25 enforcement dispatching duties for a minimum of 50 percent of the time worked
26 within a pay period.

27 (d) Nothing in this section shall prohibit a local agency from establishing
28 selection and training standards that exceed the minimum standards established by
29 the commission.

30 **Comment.** Section 13510 is amended to reflect unification of the municipal and superior
31 courts pursuant to former Section 5(e) of Article VI of the California Constitution.